



WILLIAM T FUJIOKA  
Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

713 KENNETH HAHN HALL OF ADMINISTRATION  
LOS ANGELES, CALIFORNIA 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

October 30, 2007

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**DEPARTMENT OF MENTAL HEALTH: APPROVAL OF A SETTLEMENT  
AGREEMENT WITH STIRLING ACADEMY, INCORPORATED  
(SUPERVISORIAL DISTRICT 3)  
(3 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

Approve and instruct the Director of Mental Health or his designee to prepare, sign, and execute a Settlement Agreement, substantially similar to the Attachment, with Department of Mental Health (DMH) Legal Entity (LE) contractor: Stirling Academy, Incorporated (Stirling) (LE Agreement No. MH120263), for the repayment of debt owed to the County. Effective upon Board approval, County will receive 11 monthly repayments of \$30,753, and one monthly repayment of \$30,755 from Stirling, until County has fully recovered the \$369,038 owed. Such repayments can be either in the form of actual cash payments, deductions from contractors' monthly claims, or a combination of both.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS**

Board approval of the Settlement Agreement will establish a 12-month period for Stirling to repay its County debts in lieu of the three-month repayment period as provided in the LE Agreement. This extension will mitigate an immediate adverse cash flow impact on the subject contractor so as to enhance the probability of recovery of County funds and to avoid any potential adverse impact on the level of services provision.

Board of Supervisors  
GLORIA MOLINA  
First District

YVONNE B. BURKE  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

### **Implementation of Strategic Plan Goals**

The recommended Board action is consistent with the principles of the Countywide Strategic Plan, Organizational Goal No. 4, "Fiscal Responsibility." Board approval will avoid placing immediate adverse cash flow problems on the contractor and enhance the probability of recovery of County funds.

### **FISCAL IMPACT/FINANCING**

There is no fiscal impact on DMH's Fiscal Year (FY) 2007-08 Adopted Budget. The Settlement Agreement is a recovery of County funds paid to contractor in excess of its actual earned amounts for services rendered in FY 2002-03.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The subject Settlement Agreement will allow Stirling to repay County the \$369,038 owed over a period of 12 months. The funds owed by the contractor resulted from the FY 2002-03 Short-Doyle/Medi-Cal (SD/MC) reconciliation process performed in compliance with State requirements of Medi-Cal mental health services contractors. This process takes place approximately 16 months after the close of each fiscal year.

The State Department of Mental Health (SDMH) requires an annual cost report from each contractor who provides SD/MC mental health services. Based on the submitted cost report, a SD/MC Reconciliation Settlement Report (Settlement Report) is issued by the State, which determines the amount earned by the contractor based on final approved SD/MC allowable units of services.

In accordance with the State's Settlement Report, County DMH initiates a cash settlement with the contractor, either to pay additional funds or to recover unearned funds from the contractor. The FY 2002-03 reconciliation process has determined Stirling owes County unearned funds in the amount of \$369,038.

According to the DMH Legal Entity Agreement repayment provision, the contractor is to repay the entire amount in a period not to exceed three (3) months. Stirling has informed DMH that collection of the debt in a three-month period would result in adverse consequences. To avoid an adverse cash flow impact, the County and Stirling intend to enter into a Settlement Agreement to extend the repayment period to 12 months with no interest charges.

The Settlement Agreement is consistent with recommendations made to your Board in our February 3, 2003 Board letter entitled "Settlement Agreements and the Cash Flow Loan Program." Page 2, Paragraph 1 of the "Timely Repayment of Settlement

Agreements" section states: "Should the provider exceed the three-month period, DMH negotiates a repayment settlement agreement. Any repayment settlement agreements must be approved by the Board." Paragraph 2 states: "Repayment settlement agreements help providers mitigate an immediate adverse cash flow impact, thereby enhancing the probability of recovery of County funds. Because this situation often occurs with smaller community-based agencies, many settlement agreements do not provide for penalties or interest payments on the unpaid balance." Page 3, Paragraph 1 states: "A requirement that contractors pay interest if the repayment period exceeds one year. That is, if the provider completes repayment within one year, interest charges will be waived." Because Stirling's repayment period is 12 months, DMH, therefore, recommends that there be no interest charges.

The Department of Mental Health is actively monitoring Stirling's recurring unearned-funds problems as a result of SD/MC reconciliation process, and the agency's difficulty in achieving a client mix to maximize its contract allocation. The Department has continued to support this agency by exploring a variety of possible solutions. However, based on the most recent data the Department has examined, it appears Stirling's problems will persist for FYs 2003-04, 2005-06 and 2006-07. Furthermore, due to a recent audit conducted by the Auditor-Controller for FY 2004-05, the agency may owe County additional funds based on some questionable internal business practices.

The Department continues to take appropriate steps to assist Stirling to implement corrective actions. As a first measure, the Department has placed Stirling under close monitoring of its billing and hiring practices to ensure that monthly claims approximate its actual costs. Further, DMH will conduct regular monitoring of Stirling business practices for appropriateness throughout FY 2007-08. If Stirling's problems persist, the Department will be compelled to consider more stringent measures, which may include reallocation of Stirling's maximum contract amount downward for future fiscal years.

The Settlement Agreement has been approved as to form by County Counsel. In addition, the proposed action has been reviewed and approved by the Chief Executive Officer, and the Auditor-Controller.

#### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

The extension of repayment period will mitigate an immediate cash flow impact on the contractor and, thus, avoid potential adverse change in the level of services being provided.

#### **CONCLUSION**

Honorable Board of Supervisors  
October 30, 2007  
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The Department of Mental Health will need one (1) copy of the adopted Board action. It is requested that the Executive Officer, Board of Supervisors, notify the Department of Mental Health, Contracts Development and Administration Division, at (213) 738-4684 when this document is available.

Respectfully submitted,



WILLIAM T FUJIOKA  
Chief Executive Officer

WTF:SRH:SAS  
DRJ:DS:bjs

Attachment

c: County Counsel  
Auditor-Controller  
Director, Department of Mental Health  
Chairperson, Mental Health Commission

103007\_DM\_H\_Stirling Academy

ATTACHMENT

CONTRACTOR:

Contract Number

Business Address:

Provider Number(s)

Reference Number(s)

Supervisory District(s)

SETTLEMENT AGREEMENT

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repaid to County all of Contractor's Debt, as determined by County, and has satisfied all other obligations under this Agreement, as determined by County.

This Agreement may be terminated by County without cause at any time by giving at least thirty days prior written notice to Contractor. Other termination provisions for County are found in Paragraphs 3 (REPAYMENT OF CONTRACTOR'S DEBT), 7 (DELEGATION AND ASSIGNMENT), 11 (TERMINATION FOR INSOLVENCY), and 12 (TERMINATION FOR DEFAULT). Any termination of this Agreement shall be approved by County's Board of Supervisors.

In the event that this Agreement is terminated by County, then, upon the issuance of the notice of termination, the total outstanding Contractor's Debt, as determined by County, shall be immediately due and payable by Contractor to County and shall be repaid by Contractor to County by cash payment upon demand.

2. ADMINISTRATION: Director shall have the authority to administer this Agreement on behalf of County. Contractor shall designate in writing a Settlement Manager who shall function as liaison with County regarding Contractor's performance hereunder.

3. REPAYMENT OF CONTRACTOR'S DEBT:

A. Contractor shall repay Contractor's Debt to County at the repayment rate of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) over a 12-month period from \_\_\_\_\_, 2007 through \_\_\_\_\_, 2008.

B. For FY\_\_\_\_\_, Contractor shall pay County by cash payment, towards the repayment of Contractor's Debt, the total amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) described in Subparagraph A at the rate of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) per month. Notwithstanding any other provision of this Agreement, in lieu of Contractor's cash payment of such \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) per month to County, County may, in sole discretion, withhold \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) per month from any monthly billing

submitted by Contractor under any written agreement Contractor may have with County for mental health services during the particular FY and/or from any other amounts due by County to Contractor, provided that County shall withhold more than \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) per month pursuant to Paragraph 4.

C. Notwithstanding any other provision of this Agreement, in the event that County determines that Contractor has failed to make cash payment to County as described in Subparagraph B or in Paragraph 4 (INTEREST CHARGES) and that there is no written agreement between County and Contractor for mental health services and no amounts due by County to Contractor from which the withhold amounts described in Subparagraph B or in Paragraph 4 (INTEREST CHARGES) can be made, then the total outstanding Contractor's Debt, as determined by County, shall be immediately due and payable by Contractor to County and Contractor shall repay County by cash payment upon demand.

D. In the event of future audits, settlements, and/or reconciliations that result in money owed to Contractor for the FY(s) covered by this Agreement, such amount(s) shall be offset up to the outstanding balance of the Contractor's liability to County under this Agreement.

E. Pursuant to California Code of Civil Procedure Section 360.5, Contractor hereby waives all statutes of limitation upon Contractor's Debt as described in this Agreement. Whenever requested by County, Contractor shall promptly execute and deliver to County all instruments or other documents requested by County, including, but not limited to, additional written waivers, relating to contractor's waiver of all statutes of limitation upon Contractor's Debt during the term of this Agreement.

4. INTEREST CHARGES: In the event Contractor fails to pay County any amounts due to County under this Agreement within one year, then (1) Interest Charges shall be accrued at a rate equal to the County's pool rate on investments per day on the original settlement amount, due commencing on the 366<sup>th</sup> day after the original settlement date, and (2) at County's sole option, the entire Contractor's Debt then remaining unpaid, including interest, shall become immediately payable.

Contractor shall not be allowed to use County-generated revenues to pay any interest penalties.

1 Interest Charges shall be considered part of Contractor's Debt. Contractor shall pay County the  
2 Interest Charges due by cash payment upon demand.

3 Any payment by Contractor shall be applied first to Interest Charges computed in full to the date of  
4 such payments, and the remainder to principal.

5 5. LIABILITY FOR LEGAL COSTS: Contractor may become subject to legal action for any breach of  
6 this Agreement, and in such event, Contractor shall pay all court costs, County's expenses for the  
7 enforcement of the judgment, and County's Attorneys fees.

8 6. INDEMNIFICATION: Contractor shall indemnify, defend and hold harmless County and County  
9 Special Districts, their elected and appointed officers, employees, and agents, from and against any and  
10 all liability or expense, including, but not limited to, demands, claims, actions, fees, costs, and expenses  
11 (including attorney and expert witness fees), arising from or connected with Contractor's acts and/or  
12 omissions arising from and/or relating to this Agreement.

13 7. DELEGATION AND ASSIGNMENT: Contractor shall not delegate its duties or assign its rights  
14 under this Agreement, or both, either in whole or in part, without the prior written consent of County. Any  
15 prohibited delegation or assignment shall be null and void and shall constitute a material breach of this  
16 Agreement upon which County may terminate this Agreement.

17 8. GOVERNING LAW, JURISDICTION AND VENUE: This Agreement shall be governed by, and  
18 construed in accordance with, the laws of the State of California. Contractor agrees and consents to the  
19 exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and  
20 further agrees and consents that venue of any action brought hereunder shall be exclusively in the County  
21 of Los Angeles, California.

22 9. COMPLIANCE WITH APPLICABLE LAW:

23 A. Contractor shall comply with all Federal, State, and local laws, ordinances, rules,  
24 regulations, guidelines, and directives applicable to its performance hereunder. Further, all provisions  
25 required thereby to be included in this Agreement are hereby incorporated herein by reference.

26 B. Contractor shall indemnify and hold harmless County from and against any and all liability,  
27 damages, costs or expenses, including, but not limited to, defense costs and attorneys' fees, arising from

or related to any violation on the part of Contractor, its officers, employees, or agents, of any such Federal, State or local laws, ordinances, rules, regulations, guidelines, or directives.

10. THIRD PARTY BENEFICIARIES: Notwithstanding any other provision of this Agreement, the parties do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of this Agreement.

11. TERMINATION FOR INSOLVENCY:

A. County may terminate this Agreement forthwith in the event of the occurrence of any of the following:

(1) Insolvency of Contractor: Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least 60 days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the Federal Bankruptcy Code.

(2) The filing of a voluntary or involuntary petition regarding Contractor under the Federal Bankruptcy Code.

(3) The appointment of a Receiver or Trustee for Contractor.

(4) The execution by Contractor of a general assignment for the benefit of creditors.

B. The rights and remedies of County provided in this Paragraph 11 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. TERMINATION FOR DEFAULT:

A. County may, by written notice of default to Contractor, terminate this Agreement in any one of the following circumstances:

(1) If, as determined in the sole judgment of County, Contractor fails to perform within the times specified in this Agreement or any extension thereof as County may authorize in writing; or

(2) If, as determined in the sole judgment of County, Contractor fails to perform and/or comply with any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two

1 circumstances, does not cure such failure within a period of five days (or such longer period as County  
2 may authorize in writing) after receipt of notice from County specifying such failure.

3 B. The rights and remedies of County provided in this Paragraph 12 shall not be exclusive  
4 and are in addition to any other rights and remedies provided by law or under this Agreement.

5 13. SEVERABILITY: If any provision of this Agreement or the application thereof to any person or  
6 circumstance is held invalid, the remainder of this Agreement and the application of such provision to  
7 other persons or circumstances shall not be affected thereby.

8 14. CAPTIONS AND PARAGRAPH HEADINGS: Captions and paragraph headings used in this  
9 Agreement are for convenience only and are not a part of this Agreement and shall not be used in  
10 construing this Agreement.

11 15. ALTERATION OF TERMS: No addition to, or alteration of, the terms of this Agreement, whether  
12 by written or oral understanding of the parties, their officers, employees or agents, shall be valid and  
13 effective unless made in the form of a written amendment to this Agreement which is formally approved  
14 and executed by the parties in the same manner as this Agreement.

15 16. ENTIRE AGREEMENT: The body of this Agreement and County's letter to Contractor  
16 dated \_\_\_\_\_, which is attached hereto as Exhibit A and incorporated herein by references,  
17 shall constitute the complete and exclusive statement of understanding between the parties which  
18 supersedes all previous agreements, written or oral, and all other communications between the parties  
19 relating to the subject matter of this Agreement. In the event of any conflict or inconsistency between the  
20 body of this Agreement and Exhibit A, such conflict or inconsistency shall be resolved by giving  
21 precedence to the body of this Agreement.

22 17. WAIVER: No waiver by County of any breach of any provision of this Agreement shall constitute a  
23 waiver of any other breach of such provision. Failure of County to enforce at any time, or from time to  
24 time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies  
25 set forth in this Paragraph 17 shall not be exclusive and are in addition to any other rights and remedies  
26 provided by law or under this Agreement.

27 /

1 18. CONTRACTOR'S OFFICES: Contractor shall notify in writing DMH's Contracts Development and  
2 Administration Division, and any other County office(s) as identified in Paragraph 20 (NOTICES), of any  
3 change in its business address, as shown on page I of this Agreement, at least 30 days prior to the  
4 effective date thereof.

5 19. AUTHORIZATION WARRANTY: Contractor represents and warrants that the person executing  
6 this Agreement for Contractor is an authorized agent who has actual authority to bind Contractor to each  
7 and every term, condition, and obligation of this Agreement and that all requirements of Contractor have  
8 been fulfilled to provide such actual authority.

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20. NOTICES: All notices or demands required or permitted to be given under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first class, registered or certified mail, postage pre-paid, addressed to the parties at the following addresses and to the attention of the persons named. Director shall have the authority to execute all notices or demands which are required or permitted by County under this Agreement. Addresses and persons to be notified may be changed by either party by giving ten days prior written notice thereof to the other party.

To Contractor:

Attention:

To County:

(1)

Department of Mental Health

550 S. Vermont Avenue

Los Angeles, CA 90020

Attention:

Marvin J. Southard, D.S.W., Director

(2)

Department of Mental Health

550 S. Vermont Avenue

Los Angeles, CA 90020

Attention:

Gurubanda Singh Khalsa

Finance Specialist

(3)

Department of Mental Health

550 S. Vermont Avenue, 5th Floor

Los Angeles, CA 90020

Attention:

Richard Kushi, Chief

Contracts Development and Administration Division

1 IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this  
2 Agreement to be subscribed by County's Director of Mental Health or his designee, and Contractor has  
3 caused this Agreement to be subscribed in its behalf by its duly authorized officer, the day, month, and  
4 year first above written.

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6  
7 COUNTY OF LOS ANGELES  
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10  
11 By \_\_\_\_\_  
12 MARVIN J. SOUTHARD, D.S.W.  
13 Director of Mental Health  
14

15  
16  
17 \_\_\_\_\_  
18 CONTRACTOR

19 By \_\_\_\_\_

20 Name \_\_\_\_\_

21 Title \_\_\_\_\_  
22 (AFFIX CORPORATE SEAL HERE)  
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27 APPROVED AS TO FORM  
28 OFFICE OF THE COUNTY COUNSEL  
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31 APPROVED AS TO CONTRACT  
32 ADMINISTRATION:  
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34 DEPARTMENT OF MENTAL HEALTH  
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37 By \_\_\_\_\_  
38 Chief, Contracts Development  
39 and Administration Division  
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PP: Settlement